1948 **File No.** O.B.R.T/48

P3E Legal **DEPARTMENT**

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Subject:— Opinions under the Bombay Revenue Tribunal Act

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C O N T E N T S.

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Sr, No.	Compilation No.	Subject	pages
	O.B.R.T.A./1948	Opinions under the Bombay Revenue Tribunal Act. 1939.	
1.	O.No.9363/4-10-48	Re: Bombay Revenue Tribunal Act, 1939 Section 4(1). Revisional powers of the Tribunal (pl. also see R.L.A No. 3223 dt. 3-5-1944.	

Sd. 17-11-55

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Office of the R.L.A.

Under section 4(1) of the Bombay Revenue Tribunal Act, 1939, the appellate and revisional powers of Government in revenue cases now vest in the Tribunal These powers, as interpreted by the R.L.A. in his opinion No. 3223, dated 3rd May 1944 (a copy of which is appended herewith), are judicial powers which Government were exercising before the Bombay Revenue Tribunal Act came into force.

2. "Judicial powers are powers which are exercisable by the authority appointed to determine the rights of persons or property between adversaries in specific contraversies at the instance of the party thereto". Such authority being vested in some Court officer or person to hear and determine the rights of persons or property or the propriety ofdoing an act is the subject-matter of adjudication" (see Iyer's Law Lexicon, p. 642). Such judicial power is different from discretionary power which does not in any proper sense come within the judicial power . To grant relief against forfeiture by reason of non-payment of rent is an equitable relief which is recognised as falling within the ambit of a judicial power. For "long ago Courts of equity assumed jurisdiction to relieve against forfeitures and penalities where the only object was to secure payment of a definite sum of money eventhough there was no fraud, accident, surprise or mistake. But this relief cannot be extended to other cases of forfeiture for breach of covenants in a lease except covenant for payment of rent, although it left unaffected the undoubted jurisdiction to relieve any case of breach occasioned by fraud, accident, surprise or mistake". (see Barrow Vs. Isaacs & Son, 1891, 1 Q.B. 417 at p. 425). In the present case the breach of the covenant of impartibility was not caused by fraud, accident, surprise or mistake; now was it pleaded by any

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party, obviously, therefore, the Revenue Tribunal had no jurisdiction to relieve against forfeiture arising out of the breach of covenant of the impartibility and in giving this relief that authority could not be deemed to be exercising any judicial power viz. the revisional powers of Government vesting in it. The Revenue Tribunal assumed jurisdiction without authority and the order condoning the breach is, therefore, ~~mix~~ ultra vires. Power to condone breach of any kind other than the payment of rent vests in Government and this is purely an executive power.

3. It would be improper to ignore the order of the Revenue Tribunal on the ground of its being ultra vires. Under section 4(1) the Revenue Tribunal has power to review the own decision on its own notice and motion and there is no limitation prescribed for the exercise of such power. Consequently Government may bring to the notice of the Revenue Tribunal that the order passed by it condoning the breach is ultra vires not being in exercise of any judicial power vesting in it under section 4 (1) and request it to review the order. The question as to what action should Government take in the event of the Tribunal declining to review its order may be considered later on.

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Remembrancer of Legal Affairs.

U.R. to R.D. No. 9363 dated the 4th October 1948.

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